Sanjung Selamat Sdn Bhd v CL Chin & Associates & Anor (Part 2)

HIGH COURT (KUALA LUMPUR) — CIVIL NO D4–22–67 OF 2005
ABDUL WAHAB PATAIL J
21 NOVEMBER 2005

Civil Procedure — Amendment — Order and judgment — Additional defendants to be included — Opposed by second defendant as final judgment given by court — Whether ought to be granted

The plaintiffs through its summons in chambers dated 3 October 2005 at encl 84 seeks to add as parties Yap Kwee Huat and Elmore Corporation Sdn Bhd and amend the order and judgments both dated 27 May 2005 to include the former directors and/or former shareholders of second defendant and that the Registrar of Lands, Selangor does not allow encumbrances to the land except with the court's permission. The shares of the plaintiff company were previously owned 100% by Elmore Corporation Sdn Bhd. Objections to the inclusion of Elmore and Yap Kee Huat as defendants were made by the second defendant, not Yap Kee Huat or Elmore. The second defendant objected on the ground that final judgment had been made by the court.

Held, allowing the application:

The application does not require the amendment of any order against the second defendant. The judgment against the second defendant remains final. The application affects neither the second defendant nor the first defendant. The application seeks to add additional defendants, who would have the right to defend themselves before any order is made against them or to move for the case against them to be dismissed (see para 8).

[Bahasa Malaysia summary

Plaintif-plaintif melalui saman dalam kamar bertarikh 3 Oktober 2005 di kandungan 84 menuntut untuk ditambahkan sebagai pihak-pihak Yap Kwee Huat dan Elmore Corporation Sdn Bhd dan meminda perintah dan penghakiman kedua-duanya bertarikh 27 Mei 2005 untuk menambahkan pengarah-pengarah yang terdahulu dan/atau pemegang-pemegang saham defendan kedua yang terdahulu dan bahawa Pendaftar Tanah, Selangor tidak dibenarkan adanya sebarang sekatan kepada tanah tersebut kecuali melalui kebenaran mahkamah. Saham-saham syarikat plaintif dahulunya dimiliki 100% oleh Elmore Corporation Sdn Bhd. Bantahan dibuat untuk menambahkan Elmore dan Yap Kee Huat sebagai defendan-defendan oleh defendan kedua, bukannya Yap Kee Huat atau Elmore. Defendan kedua membantah atas alasan penghakiman muktamad telahpun diberikan oleh mahkamah.

Diputuskan, membenarkan permohonan:

Permohonan tersebut tidak memerlukan sebarang pindaan terhadap apa-apa perintah terhadap defendan kedua. Penghakiman terhadap defendan kedua adalah kekal sebagai muktamad. Permohonan ini tidak menjejaskan defendan kedua ataupun defendan pertama. Permohonan ini adalah untuk menambahkan defendan-defendan, yang kemudiannya akan dapat hak membela diri mereka sebelum sebarang perintah dibuat terhadap mereka atau memohon untuk kes terhadap mereka ditolak (lihat perenggan 8).]

Notes

For cases on amendment of judgment and order, see 2(2) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 251–256.

David Hoh (Lim & Hoh) for the plaintiff.

Zainur Zakaria (James Edwin, K Gomes & Colin Victor George with him) (James Edwin & Co) for the defendant.

Abdul Wahab Patail J:

GROUNDS OF JUDGMENT (ENCL 84)

[1] The plaintiff's summons in chambers dated 3 October 2005 at encl 84 seeks:

(a) to add as parties Yap Kwee Huat and Elmore Corporation Sdn Bhd;

(b) to amend the order and judgments both dated 27 May 2005 to include the former directors and/or former shareholders of second defendant and that the Registrar of Lands, Selangor does not allow encumbrances to the land except with the court's permission; and

(c) costs of application be borne by plaintiff.

[2] The application is supported by the affidavits of Ong Hee Yong dated 1 October 2005 (encl 84A), 14 November 2005; and his previous affidavits of 3 August 2005, 4 August 2005 (encl 67), 5 August 2005 (encl 68) and 17 August 2005. In the light of the fact the decision in D3–24–323 of 2004 on 26 September 2005 did declare that Ong Hee Yong is a director since May 2004 and in essence ordered the SSM ('ROC') to register Ong Hee Yong as the plaintiff's director, the court accepts he may affirm the affidavits for the plaintiff as a director.

[3] The shares of the plaintiff company were previously owned 100% by Elmore Corporation Sdn Bhd. At the time Elmore allowed the land HS(D) 112761, PT No 1429, Mukim Damansara, Daerah Petaling, Negeri Selangor registered in the name of the plaintiff to be charged as security for the benefit of three parties Lee Man Thong, Zainuddin bin Che Soh and Vision Revenues Sdn Bhd to obtain share margin financing of RM3m each. Vision Revenues Sdn Bhd is the main shareholder of Avantgarde Resources Sdn Bhd (now registered at the KLSE). Avantgarde Resources Sdn Bhd is also owner of 100% shares in Jayarena.

[4] Exhibit OHY-8 at para 245 Ong Hee Yong's affidavit dated 3 August 2005 is a letter by Goldmount Resources Sdn Bhd's solicitors to Jayarena's solicitors Messrs CL Chin (also the first defendant herein) dated 13 July 2005 confirming meeting on 18 June 2005 called by Yap Kwee Huat (representing Jayarena, Elmore and another company called London Growth Sdn Bhd to settle all suits filed 3 August 2005. Yap Kwee Huat's name surfaced also from Elmore's affidavit in reply dated 26 July 2005 in Shah Alam High Court Originating Summons No MT1–24–1085 of 2005 to remove the Elmore's caveat. This shows a link between Jayarena, Elmore and Yap Kee Huat.

[5] An application in the High Court in Shah Alam MT1–24–1085 of 2005 to remove Elmore's caveat was previously dismissed upon a preliminary objection as to the capacity of Ong Hee Yong to execute affidavits on behalf of the plaintiff as its director. In the circumstances, there is no res judicata on the removal of the Elmore's caveat since it was disposed off without being heard on its merits. That issue as to capacity of Ong Hee Yong as director has since been decided by the High Court of Malaya in Kuala Lumpur D3–24–323 of 2004 where it was declared that Ong Hee Yong is a director since May 2004 and ordered the Registrar of Companies to register him as a director of the plaintiff.

[6] The reasons described in form 19B to support the application for the Elmore's caveat is essentially on the basis of a High Court in Shah Alam suit MT3–22–808 of 2004 which is a dispute between Elmore and inter alia Goldmount Resources Sdn Bhd for the removal of a caveat by Goldmount and the plaintiff was a nominal defendant.

[7] Before this court, objections to the inclusion of Elmore and Yap Kee Huat as defendants were made by the second defendant, not Yap Kee Huat or Elmore. The second defendant objected on the ground that final judgment had been made by the court.

[8] The application does not require the amendment of any order against the second defendant. The judgment against the second defendant remains final. The application affects neither the second defendant nor the first defendant. The application seeks to add additional defendants, who would have the right to defend themselves before any order is made against them or to move for the case against them to be dismissed.

[9] The application is granted as follows:

(i) Prayers (a) and (b);

(ii) Prayer (c) deferred; and

(iii) Costs payable by plaintiff.

Application allowed.

Reported by Sally Kee